

Oregon Constitution requires similar proceedings.

The stale claims set out in the Complaint concern alleged conduct far in the past by the Respondent well beyond any statute of limitation or repose that allows them. **That no question of current conduct, character, attribute, or fitness of the Respondent is claimed by disciplinary counsel.** There is not now and has never been a complaint from a client or attorney for which I have been disciplined in forty two (42) years. You disbar me and in a resident lawyers case with over 117 complaints from clients and other attorneys he is suspended. (See Knappenberger, Supreme Court No. 549996 (2005)).

That it is well recognized that the rules and discipline to which lawyers are subjected is not prosecuted for punishment, or even deterrent. Instead, it is to determine the present character and fitness of the lawyer involved to be in the best interests of the public and the bar to continue practicing law (see letters attached). No allegations to that effect have been made in the Complaint. There is no "substantial question" raised as to the current "honesty, trustworthiness, or fitness" of the Respondent in the Complaint. The Complaint does not state a claim upon which disbarment or discipline should be based.

G. "SPECIAL PROCEEDINGS" DISCIPLINE-APPLICATION:

What good is an ethical rule without a moral application? The core of ethical morality is choosing to do the right thing by acting responsibly and applying the rule and the spirit of the law under constitutional principles. Fair rules require fair and equal enforcement.

The first moral principal is the Golden Rule. It is a basic principle of exchange reciprocity - "do unto others, as you

would have them do unto you." In essence, the Golden Rule tells us to ask ourselves, how would I feel if this were done unto me? If you could look at the facts in this matter with that question in mind the unfairness and denial of constitutional rights in the stacked multiple reciprocal reciprocity and its difference from standard disciplinary procedures highlights the abuses inherent within its application in this case.

In Matthew 7:1-5 Jesus tells us to be cautious not to cross the line between legitimate enforcement of rules of law and failure to do so. In the Jewish Misnah custom and law ask that we "don not judge your fellow until you are in his position." When you judge man weigh the scales in his favor." (Aboth 1:6, 2:5). I look at that as an ancient rule of law to presume innocence until all the facts are known and full and fair hearing is held. Not the conclusive presumptions and changes of burdens of proof inherent in the limited exceptional case of inequality and prohibited rights in the mandatory reciprocal discipline "special" procedure. When the underlying facts are not known, but punishment is simply multiplied by several summary conclusive rushes to judgment, in the shadow of doubt of a void judgment without knowing clear details of the underlying facts of conduct, the categorical imperative of the unconditional command of reciprocal discipline punishment without any exceptions creates a blind side to facts and circumstances and multiple punishments without fairness and justice. This is especially true when stacking a series of presumptive summary conclusive orders with never "a day in court," as we know it, a "special procedure contrary to other lawyers subject to disciplinary procedures.

In philosophy and theology, there is a well known fallacy of logic call "*post hoc ergo propter hoc*" literally, "after this, therefore because of this." That is, the reciprocal disciplinary fallacy under the facts of this case. The false choice of reciprocal mandatory conclusiveness that earlier

conduct is all bad does not depict the subtleties and nuances of the underlying facts which can be brought out only through full and fair hearing with the traditional rights given to others.

H. BACKGROUND FACTS CRIMINAL CASE - NOT FULLY LITIGATED:

This court has evidence before it that the Texas, Iowa and the United States Court did not all have! In particular, the "smoking gun" which establishes the criminal defense attorney's knowledge of the dishonorably discharged felon juror occurred not subsequent to the guilty verdict as the criminal court record and appellate decision understood, but the third day of an expected six (6) week trial is set out.⁶ Exhibit 8 of the Answer to Notice is the Appendix to the Petition For Writ of Certiorari to the U.S. Supreme Court in December, 2001.

That is ten (10) years after the questionable conviction. The bill and statement of services of the expert witness attending trial everyday in order to testify for the defense.⁷ **That statement at pages 59 - 61 was obtained through discovery in the civil suit against the criminal defense counsel after appeals and disciplinary proceedings in Texas and Iowa.** It verifies that in mid-trial the information on the

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Head note 16 p 7 US v. Lloyd E. Humphreys "subsequent to the entry of verdict Humphreys discovered that the juror (felon) rights had not been restored." That assumption on appeal was wrong. Defense counsel found out during trial.

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He was not called as a defense witness along with nineteen (19) others on the witness list filed with the court because defense counsel was reserving them for a full defense on the second trial he expected because of the felon juror discovered after three (3) days of trial. (See Exhibits 11, 13, 15 of Answer for evidence of innocence by witnesses not called by defense.)

dishonorably discharged-felon juror was obtained. (Attached hereto). It was then defense counsel cut short the defense of Humphreys and used the trial for discovery allowing evidence in without objection and resting after one and a half weeks of trial instead of the scheduled six (6) weeks without calling as witnesses the retained, trial attending expert, the office manager, and others that could have exonerated Humphreys.⁸ It was not a fully litigated case in the "due course of law." Does not this shortfall by ineffective defense counsel deny due process and obstruct justice?!

It has been recognized in Oregon that ineffective assistance of counsel to the prejudice of a defendant should be considered in reviewing the due process and due course of law. (See *E.G. Trujill v. Maas*, 312 OR 431, 435, *Williamson v. Schiedle*, 2004 WL 26 770030 OR, 11/24/04.

I. BACKGROUND FACTS - GENERAL:

Thank you for the opportunity to practice law here in Oregon. I have been a member of the Oregon Bar since 1980. I was first admitted to practice in 1962 - forty two (42) years ago. I received a regular Army commission as a distinguished military graduate after graduating from law school with honors and was the first and only⁹ "Judge Advocate Lawyer with the United States Army Vietnam. When John F. Kennedy was assassinated. I was officer of the guard and was warned of an attack on our flag. My squad and I with guns at ready were

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-Exhibit 7 attached to Answer contains the undisputed facts p 8-12 and argument on defense counsel's ineffectiveness-attached in Appendix.

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In 1965, when I volunteered from Paris, France to go to Nam there were only 35,000 troops for the first six (6) months as they built up to 350,000 I was alone in country to help maintain the rule of law. My cancers are considered to have been caused by exposure to Agent Orange.

fully prepared to die in defense of our flag. During the decades of legal practice that followed I worked hard to maintain the rule of law that we had fought for. Later, I attended seminary at Southern Methodist University and was ordained to the sacred priesthood in 1998, a year after reinstatement here. I was called to be a Senior Pastor at a small traditional Episcopal church. I preached and led by example to maintain the rules of morality of God's laws.

Between 1992 and 2000 I contracted three different forms of cancer - carcinoma (four (4) times), melanoma, and cancer of the base of tongue. This was the time I received word I could apply for reinstatement in Oregon and did so. The tongue cancer metastasized to the lymph nodes of the neck and I was forced to give up the church after three (3) years. After radiation that destroyed the cancer, my thyroid and pituitary glands in my neck I was to have surgery to remove the jugular vein and left side of my neck. An hour before surgery it was decided to waive the surgery. I came to Oregon the "promised land" I had loved, to recuperate and help people maintain their legal rights and religion. My pain allowed me to better appreciate others, making me a better lawyer. I now ask you to allow me the same constitutional rights of any resident lawyer with a trial panel and appropriate procedure.

I bring this background to your attention so that you understand that the rule of the law and ethical morality is of the utmost importance to me and I simply ask for you to extend to me what I have fought in war and court for over four (4) decades for our country.

III. CONCLUSION

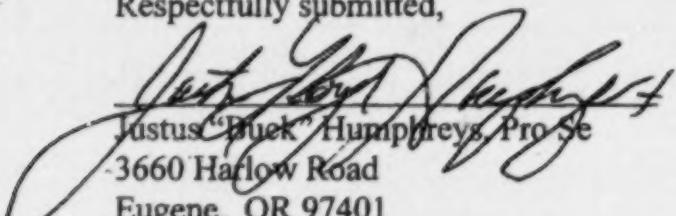
That for the reasons above and those set out in the Answer to Notice, Humphreys petitions the court for mercy to reconsider it's March 8, 2005, Order, and prays this Honorable

Court will:

- 1) dismiss the proceeding, or
- 2) reduce the sanction, or suspend until reinstated in Texas, or at a minimum grant the same rights and privileges that a resident lawyer would have to include hearing, appointment of a trial panel, and/or disciplinary board evidentiary hearing in accord with the "due course of law," and;
- 3) such other procedure as may be fair and just under the circumstances.

DATED March 28, 2005.

Respectfully submitted,


Justus "Buck" Humphreys Pro Se
3660 Harlow Road
Eugene, OR 97401
541-484-2825 Telephone
541-484-2826 Facsimile

Appendix F**OREGON STATUTES**

12.070 Action on judgment, decree or sealed instrument. (1) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States; or

(2) An action upon a sealed instrument entered into before August 13, 1965, shall be commenced within 10 years.
[Amended by 1965 c.502 □3]

12.130 Action for Penalty. An action upon a statute for a penalty given in whole or in part to the person who will prosecute for the same, shall be commenced within one year after the commission of the offense; and if the action is not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the state, by the district attorney of the county where the offense was committed or is triable.

12.140 Actions not otherwise provided for. An action for any cause not otherwise provided for shall be commenced within 10 years.

670.325 Proceedings on denial of license; restraining violations; authority of hearing officers; record of proceedings.

(1) All proceedings for the refusal to issue, or the suspension or revocation of any license, certificate of registration or other evidence of authority required to practice any profession subject to the authority of a professional licensing or advisory board shall be conducted pursuant to the procedure for contested cases required or authorized by ORS

183.310 to 183.550.

(2) If a professional licensing or advisory board decides that any person has or is about to engage in any activity that is or will be a violation of law the board is charged with enforcing, the board may institute a proceeding in an appropriate circuit court to restrain the activity or proposed activity. An injunction may be issued without proof of actual damages, but does not relieve the defendant of any criminal liability.

(3) Any hearing officer conducting a hearing for a professional licensing board is vested with full authority of the board to schedule and conduct hearings on behalf and in the name of the board on all matters referred to the hearing officer for hearing by the board, including proceedings for placing persons registered or licensed by the board on probation and for suspension and revocation of registration or licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript of the record of the hearing. The transcript shall contain all evidence introduced at the hearing and all pleas, motions and objections and all rulings of the hearing officer. Each hearing officer may administer oaths and issue summonses, notices and subpoenas, but may not place any registrant or licensee on probation or issue, refuse, suspend or revoke a registration or license. [1971 c.753 □13; 1987 c.414 □99; 1999 c.849 □155]

70.280 Denial, suspension or revocation of license is prohibited solely because of a criminal conviction; exception. Except as provided in ORS 342.143 or 342.175, no licensing board or agency shall deny, suspend or revoke an occupational or Professional license or certification solely for the reason that the applicant or licensee has been

convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold such license or certificate. [1973 c.359 □1; 1991 c.662 □6a]

CONSTITUTION OF OREGON

Section 10. Administration of justice. No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

Section 11. Rights of Accused in Criminal Prosecution. In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial Judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment. [Constitution of 1859; Amendment

proposed by S.J.R. 4, 1931, and adopted by the people Nov. 8, 1932; Amendment proposed by S.J.R. 4, 1931 (2d s.s.), and adopted by the people May 18, 1934]

Section 17. Jury trial in civil cases. In all civil cases the right of Trial by Jury shall remain inviolate.

Section 33. Enumeration of rights not exclusive. This enumeration of rights, and privileges shall not be construed to impair or deny others retained by the people.

CONSTITUTION OF THE UNITED STATES

Section. 10. Limitations upon powers of states. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

ARTICLE. IV.

Section. 2. Privileges and immunities of citizens; surrender of fugitives from other states. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. . . .

ARTICLE. V.

When Prosecution to be by presentment or indictment; double jeopardy; self-incrimination; due process; compensation for property taken for public use. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public

danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

Rights of accused in criminal prosecutions. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. [Proposed by Congress in 1789 and ratified by the necessary number of states in 1791]

AMENDMENT VII

Trial by jury in civil cases. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. [Proposed by Congress in 1789 and ratified by the necessary number of states in 1791]

AMENDMENT XIV

Section 1. Citizenship; privileges and immunities; due process; equal protection. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OREGON BAR RULES OF PROCEDURE

Rule 1.3 Nature Of Proceedings.

Contested admission, disciplinary, and reinstatement proceedings are neither civil nor criminal in nature but are *sui generis*, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant's conduct should preclude the applicant from being admitted to the Bar, or from being reinstated to membership in the Bar.

Rule 1.4 Jurisdiction; Choice of Law.

(b) **Choice of Law.** In any exercise of the disciplinary authority of Oregon, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which an attorney has been admitted to practice, either generally or for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct,

(A) If the attorney is licensed to practice only in Oregon, the rules to be applied shall be the Oregon

Code of Professional Responsibility and the Bar Act; and

(B) If the attorney is licensed to practice in Oregon and another jurisdiction, the rules to be applied shall be the rules of the jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(Rule 1.4 amended by Order dated September 30, 1996.)

2.2 Investigators.

Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of admission and reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

Rule 2.3 Local Professional Responsibility Committees And State Professional Responsibility Board.

(a) LPRCs.

(1) Appointment. The Board shall create a local professional responsibility committee for each of the districts into which the counties of the state are grouped by the Board for convenient administrative purposes. The size of each LPRC shall be as the Board determined and each LPRC may have a member of the public who is not an attorney. Members of LPRCs shall be appointed by the Board for one-year terms, and may be reappointed. The Board shall appoint a chairperson for each committee.

(2) Duties of LPRCs.

(A) Disciplinary Counsel shall refer complaints or allegations of misconduct to an LPRC, as necessary and appropriate, by assigning each matter to a specific LPRC member, with notice to the LPRC chairperson.

(B) Members of the LPRC serve as fact-finders, investigating those complaints or allegations of misconduct referred to them by the SPRB or Disciplinary Counsel. Upon the conclusion of an investigation by an LPRC member, the member shall submit a written report to Disciplinary Counsel with specific findings. The LPRC member also shall provide a copy of such report to the chairperson of the LPRC of which he or she is a member.

(C) LPRC members are to complete each investigation and submit a written report within 90 days of the receipt of the referral from Disciplinary Counsel. The SPRB may grant one extension of time for a maximum of 60 days for good cause shown. Thereafter, if the investigation is not complete, the LPRC shall refer the matter back to Disciplinary Counsel for completion.

(D) An LPRC chairperson shall monitor the progress of the investigations assigned to the members of his or her committee, and may assign additional committee members to an investigation if the principal investigator requests it or if the LPRC chairperson deems it appropriate.

(E) An LPRC member may request that the LPRC chairperson convene a meeting of the LPRC or otherwise solicit input from other LPRC members in those matters justifying such committee deliberation. However, an LPRC member need not obtain the approval of the LPRC as a

whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel.

(F) LPRCs shall perform such other duties on behalf of the Bar as may be referred to such LPRCs by the SPRB or Disciplinary Counsel.

(3) Authority.

(A) LPRCs shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(B) A witness in an investigation conducted by an LPRC who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. LPRCs may enforce any subpoena issued pursuant to BR 2.3(a)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(C) A member of an LPRC may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(a)(3)(A).

(b) SPRB.

(1) Appointment. The Board shall create for the state at large a state professional responsibility board and appoint its members.

(2) Duties of SPRB. The SPRB shall supervise the investigation of complaints, allegations, or instances of alleged misconduct on the part of attorneys and act on such matters as it may deem appropriate. A complaint by a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or the institution of disciplinary proceedings against any attorney.

(3) Authority.

(A) The SPRB shall have the authority to dismiss complaints, allegations or instances of alleged misconduct against attorneys, refer matters to Disciplinary Counsel or LPRCs for investigation, issue admonitions for misconduct, refer matters to the State Lawyers Assistance Committee, approve and supervise diversion agreements, institute disciplinary proceedings against any attorney, or take other action within the discretion granted to the SPRB by these rules.

(B) The SPRB shall have the authority to adopt rules dealing with the handling of its affairs, subject to approval by the Board.

(C) The SPRB shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(D) A witness in an investigation conducted by the SPRB who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to

which a witness before a circuit court is subject. The SPRB may enforce any subpoena issued pursuant to BR 2.3(b)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

Rule 2.4 Disciplinary Board.

(e) Duties of State Chairperson.

- (1) The state chairperson shall coordinate and supervise the activities of the Disciplinary Board, including the monitoring of timely preparation and filing of trial panel opinions.
- (2) The state chairperson shall not be required to, but may, serve on trial panels during his or her term of office.
- (3) The state chairperson shall resolve all challenges to the qualifications of regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings.
- (4) Upon receipt of written notice from Disciplinary Counsel of service of a statement of objections, the state chairperson shall appoint a trial panel and trial panel chairperson from an appropriate region. The state chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.
- (5) The state chairperson shall appoint a member of the Disciplinary Board to conduct pre-hearing conferences as provided in BR 4.6.
- (6) The state chairperson may appoint Disciplinary Board members from any region to serve on trial panels or to

conduct pre-hearing conferences as may be necessary to resolve the matters submitted to the Disciplinary Board for consideration.

(7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the state chairperson shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel of service of a formal complaint, the regional chairperson shall appoint a trial panel from the members of the regional panel and a chairperson thereof. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the accused of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.

(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson shall convene the

hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.

(I) Duties of Trial Panel.

(1) Trial. It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.

(2)

(a) Opinions.

The trial panel shall render a written opinion signed by the concurring members of the trial panel. A dissenting member shall note the dissent and may file a dissenting opinion attached to the majority opinion of the trial panel. The majority opinion shall include specific findings of fact, conclusions and a disposition. The trial panel chairperson shall file the original opinion with the Disciplinary Board Clerk, and serve copies on the parties and the State Court Administrator. It shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the trial panel chairperson pursuant to BR 4.8, whichever is later.

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file such record with the Disciplinary Board Clerk.

Rule 2.6 Investigations

(a) Review by Disciplinary Counsel.

- (1) For disciplinary complaints referred to Disciplinary Counsel by the client assistance office pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the complaint, mail a copy of said complaint to the attorney, if the client assistance office has not already done so, and notify the attorney that he or she must respond to the complaint in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney. An attorney need not respond to the complaint if he or she provided a response to the client assistance office and is notified by Disciplinary Counsel that further information from the attorney is not necessary.
- (2) If the attorney fails to respond within the time allowed, Disciplinary Counsel may refer the complaint to an appropriate LPRC within 14 days of the time set for the response. The procedure set forth in BR 2.3(a) shall be followed. Disciplinary Counsel shall inform the complainant and the attorney in writing of this action.

(b) Dismissal by Disciplinary Counsel. If, after considering a disciplinary complaint, the response of the attorney, and any additional information deemed relevant, Disciplinary Counsel determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed. The complainant and the attorney shall be notified in writing by Disciplinary Counsel of the dismissal. A complainant may contest in writing the action taken by Disciplinary Counsel in dismissing his or her complaint, in which case Disciplinary Counsel shall submit a report on the

complaint to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate on such complaint.

C) Review by SPRB.

(1) If Disciplinary Counsel determines that misconduct may be involved, the complaint shall be referred by Disciplinary Counsel to an appropriate LPRC for further investigation, or referred by Disciplinary Counsel to the SPRB at a scheduled meeting. If the complaint is referred to an LPRC by Disciplinary Counsel, the procedure specified in BR 2.3(a) shall be followed. Otherwise, the SPRB shall evaluate the complaint based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, refer it to an LPRC, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10, approve the filing of a formal complaint by the Bar against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such procedure shall be initiated within 14 days of the SPRB's meeting. If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

C) If the SPRB determines that the complaint should be investigated further, Disciplinary Counsel shall conduct the investigation or submit the complaint to the appropriate LPRC within 14 days of the SPRB's meeting. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(d) Review of LPRC Reports by SPRB.

(1) Disciplinary Counsel shall submit an LPRC's report to the SPRB at a scheduled meeting. The SPRB shall evaluate the complaint based on the LPRC's report and the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, have it investigated further, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10, approve the filing of a formal complaint against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such action shall be initiated within the time set forth in BR 2.6(c)(1)(B). If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

C) If the SPRB determines that further investigation is needed, Disciplinary Counsel shall conduct the investigation or, within 14 days of the SPRB's meeting, refer the matter to the appropriate LPRC member who shall conduct a further investigation in accordance with BR 2.3(a). The further investigation by an LPRC shall be completed and a report shall be filed with Disciplinary Counsel within 30 days after the date of the referral. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action. The report of the further investigation shall be submitted to the SPRB at a scheduled meeting, at which the SPRB shall take action in accordance with BR 2.6(d)(1).

(e) Reconsideration; Discretion to Rescind.

(1) A decision by the SPRB to dismiss a complaint or allegation of misconduct against an attorney shall not preclude reconsideration or further proceedings on such complaint or allegation if evidence not available or submitted at the time of such dismissal justifies, in the judgment of not less than a majority of SPRB, such reconsideration or further proceedings.

(2) A decision by the SPRB to file a formal complaint against an attorney for misconduct may be rescinded by the SPRB only when, to the satisfaction of a majority of the entire SPRB, good cause exists. Good cause is:

(A) new evidence which would have clearly affected the SPRB's decision to file a formal complaint; or

(B) legal authority, not known to the SPRB at the time of its last consideration of the matter, which establishes that the SPRB's decision to file a formal complaint was incorrect.

(f) Approval of Charges.

(1) If the SPRB determines that a formal complaint should be filed against an attorney, or if an attorney rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. The attorney and the complainant shall be notified in writing by Disciplinary Counsel of such action.

(2) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that no further action on a complaint or allegation of misconduct be taken by the Bar if one or more of the following circumstances exist: the attorney is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon; other disciplinary proceedings are pending that are likely to result in the attorney's disbarment; other disciplinary charges are authorized or pending and the anticipated sanction should the Bar prevail on those charges, is not likely to be affected by a guilty finding in the new matter or on an additional charge; or formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings. An exercise of discretion under this rule to take no further action on complaint or allegation of misconduct shall not preclude further consideration or proceedings by the SPRB on such complaint or allegation in the future.

(3) Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a complaint or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be

harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising its discretion under this rule include, but are not limited to: the attorney's mental state; whether the misconduct is an isolated event or part of a pattern of misconduct; the potential or actual injury caused by the attorney's misconduct; whether the attorney full cooperated in the investigation of the misconduct; and whether the attorney previously was admonished or disciplined for misconduct. Misconduct that adversely reflects on the attorney's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

Title 3 -- Special Proceedings
Rule 3.4 Conviction Of Attorneys.

(a) Referral of Convictions to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been convicted in any jurisdiction of an offense that is a misdemeanor which may involve moral turpitude or is a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States. Disciplinary Counsel shall file a copy of the documents which show the conviction and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney. A "conviction" for the purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty.

(b) Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.

(c) Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.

(d) Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(e) Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. The referral shall be made in writing to the Disciplinary Board Clerk, with copies to Disciplinary Counsel and the attorney. Upon receipt of notice of a referral of a conviction matter to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.

(f) Independent Charges; Consolidated Proceedings. The SPRB may cause disciplinary charges to be filed against the attorney independent of the fact of the attorney's conviction. In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.

(g) Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of

these rules.

(h) **Reinstatement Rules Apply.** The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).

(i) **Relief From Suspension.** If an attorney's conviction is reversed on appeal, and such reversal has become a final order not subject to further appeal or review, or the attorney has been granted a new trial which order has become final, a suspension or discipline previously ordered shall be vacated upon the court's receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal OSB Rules of Procedure (Revised 1/04) 24 or the granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

(Rule 3. 4(d) amended by Order dated March 13, 1989, effective April 1, 1989)

(Rule 3.4(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003)

Rule 3.5 Reciprocal Discipline.

- (a) **Notice to Court.** Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been disciplined for misconduct in another jurisdiction. Disciplinary Counsel shall file a copy of the judgment, order or determination of discipline with the court, with written notice to the attorney. A plea of no contest, a stipulation for discipline or a resignation while formal charges are pending shall be considered a judgment or order of discipline for the purposes of this rule. The judgment or order or determination of discipline shall be accompanied by a recommendation of the

SPRB as to the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court, and such other information as the Bar deems appropriate to file with the court.

(b) Judgment Sufficient Evidence of Misconduct. A copy of the judgment, order or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct described therein.

(c) Answer of Attorney. The attorney shall have 21 days from the filing of the judgment, order, or determination of discipline with the court to file with the court an answer discussing the following issues:

(1) Was the procedure in the jurisdiction which disciplined the attorney lacking in notice or opportunity to be heard?

(2) Should the attorney be disciplined by the court? The attorney shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the court.

(d) Reply of Bar. The Bar shall have 14 days from the expiration of the time specified in BR 3.5C) in which to file a reply to the attorney's answer with the court. The Bar shall mail a copy to the attorney and file proof of mailing with the court.

(e) Review by Court; Referral for Hearing. Upon review of the judgment, order or determination of discipline and the response and answer filed by the attorney and the Bar, and after oral argument if ordered by the court, the court shall determine whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner. The court, in its discretion, may refer the

matter to the Disciplinary Board for the purpose of taking testimony on the issues set forth in BR 3.5(c)(1) and (2). The referral shall be made in writing to the Disciplinary Board Clerk with copies to Disciplinary Counsel and the attorney. Upon receipt of a notice of referral to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the issues before the Disciplinary Board. The same rules as apply in a disciplinary proceeding shall apply in a reciprocal discipline proceeding.

(f) **Burden of Proof.** The attorney shall have the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction.

(g) **Hearing; Review by Court.** A trial panel appointed by the state chairperson shall make a decision concerning the issues submitted to it. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) **Suspension.** The court may suspend an attorney from the practice of law in this state at the time it approves a referral of the matter to the Disciplinary Board for hearing. The suspension shall remain in effect until otherwise ordered by the court. An attorney suspended under this rule shall comply with the requirements of BR 6.3(a) and (b).

(i) **Reinstatement Rules Apply.** The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.5(e), (f) and (g).

(j) **Independent Charges.** Nothing in this rule shall preclude the filing of disciplinary charges by the Bar against an attorney for misconduct in any jurisdiction.

(Rule 3.5 amended by Order dated July 16, 1984, effective

August 1, 1984.)

(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)

(Rule 3.5(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)

Rule 5.1 Evidence And Procedure.

(a) Rules of Evidence. Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) Harmless Error. No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the accused has occurred.

(Rule 5. I (a) amended by Order dated February 23, 1988)

Rule 5.2 Burden Of Proof.

The Bar shall have the burden of establishing misconduct by clear and convincing evidence.

A . Rule 5.3 Location Of Hearing; Subpoenas; Testimony.

(a) Location. In the trial of any disciplinary proceeding, the hearing shall be held either in the county in which the person charged maintains his or her office for the practice of law or other business, in which he or she resides, or in which the

offense is alleged to have been committed, in the discretion of the trial panel chairperson. With the consent of the accused, the hearing may be held elsewhere. In the trial of a disciplinary proceeding involving an accused who does not maintain an office or residence in Oregon and the alleged misconduct did not occur in Oregon, or in the trial of any contested reinstatement matter, the hearing shall be held at a location designated by the state chairperson of the Disciplinary Board.

(b) Subpoenas. The Executive Director, the state chairperson or regional chairpersons of the Disciplinary Board, trial panel chairpersons, Bar Counsel, Disciplinary Counsel and the attorney of record for the accused or the accused, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to BR 4.5 may be enforced by application of the Bar or an accused to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) Board Members as Witnesses. Current members of the Board of Governors shall not testify as witnesses in any Bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

(d) Testimony. Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an

oath.

(e) Transcript of Proceedings; Correction of Errors; Settlement Order. Every disciplinary hearing shall be transcribed. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the accused of the filing of the transcripts with the Disciplinary Board Clerk, who shall provide copies to the trial panel chairperson.

Rule 5.7 Consideration Of Sanctions.

Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the accused is in violation of a disciplinary rule or statute. Only when the trial panel chairperson considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred. (Rule 5.7 amended by Order dated February 23, 1988.)

Rule 6.1 Sanctions.

(e) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years has elapsed from the effective date of his or her disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

(Rule 6.1(a) amended by Order dated May 31, 1984,

effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985. Rule 6.1(a) amended by Order dated December 14, 1995. Rule 6.1(d) amended by Order dated December 14, 1995. Rule 6.1(e) added by Order dated December 14, 1995. Rule 6.1(a) amended by Order dated June 5, 1997, effective July 1, 1997.) (Rule 6.1(a) amended by Order dated February 5, 2001.)

